



Planning Department

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INTERDEPARTMENTAL COMMUNICATION

To: Steven Ledoux, Town Manager **Date:** September 6, 2013
From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner
Subject: Site Plan Special Permit Application #08/01/13-444

Location: 400 Massachusetts Avenue
Applicant: TRB Development Group, Inc., 36 Londonderry Turnpike, Hooksett, NH 03106
Owner: Daniel & Carl Silverstrone, Mustard Seed Properties, LLC., c/o Page Road, Bedford, MA 01730-1333
Engineer: Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772
Architect: BKA Architects, Inc., Architecture and Interiors, 142 Crescent Street, Brockton, MA 02302
Zoning: Kelley's Corner (KC)
Groundwater Protection District Zone 4
Proposed FAR: Unknown at this time
Base FAR – 0.20
Maximum FAR – 0.40 (Based upon requirements set forth in Section 5.6)
Proposed Uses: CVS Pharmacy (with potential for future drive-up facility)
Map/Parcel: F-3/118-2 & 128
Hearing Date: September 9, 2013
Decision Due: December 8, 2013

Attached are the legal ad, application, plan sheets and interdepartmental review comments received to date. As of this date, comments have been received from the Town of Acton's Design Review Board, Health Department, Water Supply District of Acton, Engineering Department and an email from the Planning Director. Upon review of the project submission, it appears that there could be significant obstacles to overcome before any decision could be granted.

The applicant is proposing to demolish an existing structure (Goodyear building) and construct a new CVS retail store in its place. As per the Town of Acton Assessor's Office information, the subject Site is 1.32 acres (57,499 square feet) in area, has approximately 200'-0" of frontage along Massachusetts Avenue, and is located within the Kelley's Corner zoning district. The existing structure is approximately 6,933 square feet in size and was constructed in 1974, according to Assessor's Office records.

The Site Plan:

The site plan special permit application proposes to construct a new essentially one-story (less than 36' high), 18,131.96 square foot (total NET FAR) CVS retail outlet. The proposed structure is predominantly a one

story building, with the exception of a mezzanine level located along the eastern side of the building. The proposed use of the mezzanine level would primarily be for storage of the retailer's merchandise. The ground floor of the proposed CVS building is +/- approximately 15,487.26 square feet of NET FAR, while the proposed mezzanine is +/- approximately 2,644.70 square feet of NET FAR in size. The proposed Site Plan also includes a 73 space parking lot and provisions for a future pharmacy drive-through pick-up window facility. The current site plan layout places 34 of the parking spaces and a 24'-0" wide accompanying maneuvering aisle along the side of the CVS building and perpendicular to Massachusetts Avenue. The remainder of the 73 parking spaces are located behind the proposed building. The Site Plan also proposes a 24'-0" wide drive to run across the front of the property and parallel to Massachusetts Avenue. This results in the proposed CVS structure being set back +/- approximately 50'-4" from the Massachusetts Avenue property line at its absolute closest corner only. The proposed CVS structure is not sited parallel to Massachusetts Avenue, which results in the majority of the proposed building being setback further than the closest corner. A driveway entrance/connection has also been proposed to provide direct access to the rear parking area. A 55'-0" wide easement currently exists along the common property line between the proposed CVS property and the immediately abutting TD Bank property. This was provided as part of a previous Site Plan Special Permit to develop the TD Bank building, was a Zoning Bylaw requirement (5.6.2.2) and was necessary in order to facilitate any potential future development of the parcel of land located immediately to the south (behind the TD Bank property).

The proposed relevant zoning information for the subject site is summarized in the following table:

By-Law Requirements	Required	Existing	Proposed
Min. Lot Area (ft ²)	10,000 ft ²	57,677 ft ²	64,757 ft ² *
Min. Lot Frontage (ft)	100'-0"	200'-0"	200'-0"
Min. Front Yard (ft) - North	30'-0"	NA	50.3'***
Min. Side Yard (ft) – East	NR	NA	25.3'
Min. Side Yard (ft) – West	NR	NA	68.7'
Min. Rear Yard (ft) – South	NR	NA	124.6'
Max. Building Height (ft)	36'-0"	NA	Unknown
Max. F.A.R. (Floor Area Ratio)	0.20	NA	0.28***
Open Space	NR	NA	Unknown
Parking Requirements	Required	Existing	Proposed
Use: Retail Store (18,131.96ft ²) 1 space/300ft ² of N.F.A.	61	NA	73
Kelley's Corner Zoning District Reduction as per 6.9.5.3	43		73

* The site plan currently submitted includes a note which indicates that 7,080 square feet of land from Lot 118-2 will be transferred via a lot line adjustment/ANR Plan to the proposed CVS parcel of land identified as Lot 128.

** The front setback is being measured from the Massachusetts Avenue property line to the closest projection of the proposed CVS structure. The proposed structure is not sited parallel to the Massachusetts Avenue property line which results in the majority of the proposed building being setback further than the closest corner.

*** The adjusted developable site area (as described in note * above) is 64,757 square feet. Based upon preliminary calculations, the proposed net floor area of the CVS structure is +/- approximately 18,131.96 square feet. Therefore, the proposed net floor area converts to a 0.28 ratio.

Planning Department Comments

As of the date of this memo, the most significant concern and issue surrounding this proposed project, is with regards to the ownership of the parcel of land which is proposed to be the site of the new CVS retail store and its relationship to the current ownership rights of the immediately adjoining and abutting properties. Currently, the property located at 400 Massachusetts Avenue (Map F3, Lot 128) is under contract through an executed Purchase & Sale Agreement to be sold to TRB Development Group, Inc. The immediately adjoining and abutting properties have the following ownership information:

- 394 Massachusetts Avenue (Map F3, Lot 134) – 394 Massachusetts Avenue, LLC
- 408 Massachusetts Avenue (Map F3, Lot 127) – NOTCA, LLC.
- 408 Massachusetts Avenue Behind (Map F3, Lot 118-2) – Parker Lane Investment Trust

Due to the fact that the 400 Massachusetts Avenue property (site of the proposed CVS retail store) is held in different ownership from the adjoining and abutting properties, it must be viewed as a single and independent stand-alone lot/property. The site plans which are currently submitted, indicate that the neighbouring TD Bank property (currently owned by NOTCA, LLC.) is being utilized in determining and calculating the overall developable site area and Floor Area Ratio calculations among other requirements. Through verbal conversations with the property owner of 408 Massachusetts Avenue, as well as representatives of TRB Development Group, it has come to light that there is absolutely no intention of the 408 Massachusetts Avenue (TD Bank) property ever being combined or joined with any of the other properties. This creates a situation where the TD Bank property must always remain and be viewed as its own stand-alone individual property. Therefore, it is not possible to use the 408 Massachusetts Avenue (TD Bank) property in the calculations for the 400 Massachusetts Avenue (CVS) property.

Additionally, due to the 400 Massachusetts Avenue property remaining in separate and different ownership, there are dimensional zoning requirements which are not currently satisfied based upon the current proposal. The project as currently proposed, and at a minimum, does not comply with the Floor Area Ratio (FAR) and minimum parking setback requirements along both side property lines. Should the subject property continue to be held in separate and different ownership from adjoining and adjacent properties, then the proposed structure would need to be reduced in size to be under a 0.2 FAR, or Section 5.6 of the Zoning Bylaw – Special Provisions for the Kelley's Corner District – becomes applicable and would be required to be satisfied.